

# EXHIBIT

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TIMES SQUARE CONSTRUCTION, INC.,

Plaintiff,

-against-

07-CV-7250

MASON TENDERS DISTRICT COUNCIL OF  
GREATER NEW YORK & LONG ISLAND and  
CONSTRUCTION GENERAL LABORERS JATC,  
LOCAL UNION NO. 79,

Defendants.

-----X

October 18, 2007

10:15 a.m.

Deposition of DONAL G. O'SULLIVAN,  
held at the offices of McDermott Will &  
Emery LLP, 340 Madison Avenue, New York, New  
York, pursuant to Stipulation, before John  
Ianno, Jr., a Notary Public of the State of  
New York.

1

2 **D O N A L G. O ' S U L L I V A N,**

3 called as a witness, having been first duly

4 sworn by the Notary Public (John Ianno, Jr.),

5 was examined and testified as follows:

6 **EXAMINATION BY**

7 **MR. PETERSON:**

8 Q. Good morning.

9 A. Good morning.

10 Q. I'm Lowell Peterson, I represent the  
11 union in this case, in which Times Square  
12 Construction is the plaintiff, and I understand  
13 that you are an officer of Navillus; is that  
14 right?

15 A. Correct.

16 Q. What is the full name of the Navillus  
17 company that you are an officer of?

18 A. Navillus Tile, Incorporated.

19 Q. Is there also Navillus Construction,  
20 or Navillus Concrete, or does Navillus have any  
21 other names it goes by?

22 A. d/b/a.

23 Q. d/b/a meaning doing business as?

24 A. Correct.

25 Q. What office do you hold in Navillus?

**D. O'Sullivan**

1

2

A. I'm the president.

3

Q. How long have you been the president?

4

A. Since its beginning.

5

Q. Which is when?

6

A. '87.

7

Q. Are you also a -- do you have an

8

ownership interest in Navillus?

9

A. I do.

10

Q. What percentage?

11

A. 50.

12

Q. Is there one person that has the other

13

50?

14

A. That's correct.

15

Q. Who is that?

16

A. Kevin O'Sullivan.

17

Q. Have you each been 50-50 owners since

18

1987?

19

A. No.

20

Q. When did that start, when you each

21

owned half?

22

A. Approximately 1999.

23

Q. I understand Kevin resigned as an

24

officer at some point last year, but before that,

25

what office did he hold in the company?

**D. O'Sullivan**

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Q. Has anyone else had an ownership interest in Times Square other than the two of you?

A. No.

Q. Do you hold an office in Times Square?

A. No.

Q. Do you know why Kevin resigned his office at Navillus?

A. No.

Q. Did he say anything to you about why he was resigning?

A. We talked about getting into development some while back. We agreed after looking at some properties, we agreed that he would, Kevin would run that division, I would run the Navillus division.

Q. You mentioned division. Division --

A. Put another word, that company, or...

Q. There is also an entity called Eighth and 48th Street Development Corp.?

A. Yes.

Q. What is the function of that company?

A. The owner -- part owners of the 785 project.

1 **D. O'Sullivan**

2 connection with the property?

3 A. Correct.

4 Q. When did you first start doing  
5 anything, I'm not talking about ownership, not  
6 talking about work, but anything at all, when did  
7 you first start working?

8 A. Me personally, or Navillus?

9 Q. You personally.

10 A. Me personally -- November, 2005,  
11 approximately.

12 Q. What was it that you were doing in  
13 approximately November, 2005?

14 A. We were discussing a partnership with  
15 our partners today of -- we were discussing  
16 partnership, discussing partnership, really.

17 Q. That's the company Mr. Eisenstat is an  
18 owner of?

19 A. Personal, I don't know whether he owns  
20 that company that time or not. This was a  
21 conversation between I and Jay and his partner,  
22 Dave.

23 Q. What is Dave's last name?

24 A. Scharf.

25 Q. Probably S C H A R F?

1 **D. O'Sullivan**

2 that you or your brother have owned before Eighth  
3 Avenue?

4 A. No.

5 Q. I must be mashing the question then.

6 A. We would have had -- our contract  
7 would be with general contractors.

8 Q. Fair enough. Unless you were the GC  
9 yourself, that is to say Navillus was the GC?

10 A. Correct. On the GC, Navillus's  
11 general contracting would be just agency work, as  
12 in SCA, school construction authority, and DDC,  
13 those divisions.

14 Q. Got you, with respect to the nonagency  
15 stuff where you, being Navillus, is not the  
16 general contractor, ordinarily you would submit a  
17 bid to the general contractor for the portion of  
18 the work that Navillus was hoping to perform;  
19 correct?

20 A. For the most part.

21 Q. Can you give us an estimate of how  
22 many times, other than Eighth Avenue and 34th  
23 Street Navillus, has been awarded a contract on a  
24 cost plus basis?

25 A. I couldn't.

1 *D. O'Sullivan*

2 set the schedule.

3 Q. You were a member of the development  
4 team?

5 A. No, I'm not. There is -- let me be  
6 clear on this -- our partners have all the  
7 responsibility of the development team with  
8 reference to 785 or development duties I guess you  
9 would call it.

10 Q. What do you mean by development  
11 duties?

12 A. Requisitions, schedules, financing,  
13 those type things.

14 Q. Who decided that Navillus would do  
15 work at Eighth Avenue?

16 A. We were hired by Times Square.

17 Q. Who did you talk with about Navillus  
18 being hired to do work at Eighth Avenue?

19 A. I don't know if I actually talked to  
20 anyone. Again, I'm not sure, I don't get involved  
21 in a lot of details with jobs, it could very well  
22 be my project manager.

23 Q. Who is that?

24 A. For this particular job at the time  
25 was Gerry Cormican.



1 **D. O'Sullivan**

2 Q. All right, what about Wayne Murphy,  
3 when did he start working for Navillus?

4 A. Not sure.

5 Q. What was his job when he was at  
6 Navillus?

7 A. Safety manager, safety inspector is a  
8 better word, better description.

9 Q. Do you know if he worked for Navillus  
10 longer than a year, less than a year?

11 A. I know he worked for Navillus sometime  
12 back.

13 Q. When did he go to Times Square?

14 A. Sometime the early first half of this  
15 year again, I'm not sure.

16 Q. Of 2007?

17 A. Yes.

18 Q. When did Wayne Murphy start working at  
19 the Eighth Avenue job site?

20 A. Fall of 2006.

21 Q. So in the fall of 2006, was he the  
22 safety inspector employed by Navillus at the job?

23 A. Yes.

24 Q. That's the job he currently performs  
25 at the job site for Times Square; correct?

**D. O'Sullivan**

1  
2 next one.

3 MR. PETERSON: Next one.

4 MR. STURM: Weren't you referring to  
5 1121 --

6 MR. PETERSON: No, 1119 --

7 Q. But by way of coming attractions,  
8 let's look at 1121, that is signed by you on  
9 behalf of Times Square Construction also; correct?

10 A. Correct, again, same date.

11 Q. March 3, 2006?

12 A. This would have been a case where I  
13 would have been asked to go in and -- Kevin would  
14 have asked me to go in and sign these documents  
15 all in one day. So that we know the process of  
16 these things, these would have been reviewed by  
17 Kevin's attorney, and he would have okayed, if he  
18 wasn't here, he would have okayed me, he would  
19 have asked me to go in and sign these, in order to  
20 again, let a bank closing proceed or something to  
21 that effect.

22 Q. Well, you are not saying you lacked  
23 the authority to bind Times Square Construction,  
24 are you?

25 A. What I'm saying is I would not have

1 **D. O'Sullivan**

2 that a bill would be paid like that.

3 MS. PITTAWAY: I'll go ahead and ask  
4 my client, because I'm sure we have our own  
5 records.

6 MR. PETERSON: I would be surprised if  
7 it were anything other than what we think it  
8 is, but...

9 Q. Do you know a man named Nick Albanese?

10 A. Met him about ten years ago.

11 Q. Okay, in what circumstances did you  
12 meet Nick ten years ago?

13 A. He asked Navillus to be a payroll  
14 master on a job downtown. He was a business agent  
15 at the time.

16 Q. For Local 79?

17 A. Sorry, he might have been a business  
18 agent or an organizer, I'm not so sure, but it was  
19 1996 or '7, there were people asking me if we  
20 could put an individual from 79 on as a payroll  
21 master on a job.

22 Q. And did you?

23 A. Yes.

24 Q. Do you know who the other contractor  
25 was?

1 **D. O'Sullivan**

2 A. It wasn't a contractor, I think it was  
3 an owner. Actually I'm not that sure. It was 121  
4 Reade Street was the address.

5 Q. Between then and 785 Eighth Avenue has  
6 Navillus served as a paymaster for anyone else?

7 A. I really don't know.

8 Q. Did you have any meetings or  
9 conversations with Nick Albanese between that job  
10 on Reade Street, and the summer of 2007?

11 A. No. I didn't have any conversations  
12 with him.

13 Q. In summer of 2007 either?

14 A. No.

15 Q. But Navillus did serve as a paymaster  
16 for Nick Albanese on the Eighth Avenue job at some  
17 point this year; correct?

18 A. For a week or so.

19 Q. How did that come about?

20 A. Times Square requested of Navillus to  
21 put on a -- somebody from 79 as -- asked us to be  
22 paymaster.

23 Q. Who at Times Square made this request?

24 A. I believe it was Fergal, and it  
25 wouldn't be to me.

1 **D. O'Sullivan**

2 general contractors, I don't know what they do.

3 Q. Navillus has a collective bargaining  
4 agreement with Local 79?

5 A. Right.

6 Q. Approximately when was this, that  
7 Navillus became a paymaster?

8 A. I don't know, I think I was in Ireland  
9 at the time but that would have been the summer of  
10 2006 sometime, '7.

11 Q. Did Navillus employ Local 79 members  
12 at the job site at that time?

13 A. Can't answer, don't know.

14 Q. Do you know what phase Navillus's work  
15 was in at that time at the job site?

16 A. Superstructure work.

17 Q. Do you know if in doing the  
18 superstructure work you employed 79 laborers?

19 A. No, you do not.

20 Q. So would a fair summary be that you  
21 don't know for a fact whether Navillus was  
22 employing other Local 79 members at that time, but  
23 the chances are it wasn't, because it was doing  
24 superstructure work; is that a fair statement?

25 A. Correct.

1 **D. O'Sullivan**

2 A. He just -- he mentioned in  
3 conversation to me that he goes to the job every  
4 day looking -- my general superintendent watching  
5 my concrete crew, and I think he was upset that he  
6 got tied into something where he -- where we  
7 accepted Navillus as being a paymaster of --

8 Q. Who got upset?

9 A. Gabriel, that 79 would send out such  
10 an individual, in order to keep the peace.

11 Q. Who was on the hook for the money,  
12 though, let's say this is accurate, Nick Albanese  
13 showed up and didn't perform any productive work.  
14 Whose pocket did the money that paid Albanese come  
15 out of?

16 A. We -- I think we paid him the first  
17 week, whatever Times Square would have -- Times  
18 Square would have told -- I'm not too sure on that  
19 one, but we would have paid for the first week,  
20 and we would bill Times Square.

21 Q. So anything that Navillus paid to Nick  
22 Albanese, you would simply bill Times Square for?

23 A. Correct.

24 Q. Is that in fact what happened here?

25 A. I have no idea.